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In the Supreme Court of the United States

COLEMAN J. WARD, ET AL.,

Petitioners,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LOVE COUNTY, OKLAHOMA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

J. E. BENNETT,
GEO. P. GLAZE,
ESTELLE BALFOUR BENNETT,
Attorneys for Petitioners.

Oklahoma Law Brief Company, 130 West Third Street, Oklahoma City.

NOTICE OF PETITION FOR WRIT OF CERTIORARI AND SERVICE THEREOF.

T. B. Wilkens, Esq.,
County Attorney of Love County, Oklahoma,
Attorney for Respondent.

You will please take notice that the petitioners, Coleman J. Ward, et al., will present the petition for a *Writ of Certiorari*, which is contained herein, to the Honorable Supreme Court of the United States at Washington, D. C., on Monday, October 21, 1918, at the hour of convening, or as soon thereafter as the said court may permit presentation thereof, at which time you may be present if you so wish.

Dated this 24th day of September, 1918.

J. E. Bennett
Geo. P. Glazer
Estelle Balfour Bennett

Attorneys for Petitioners.

Service of the foregoing notice and copy of petition for *Writ of Certiorari*, together with copy of Transcript of Record in Supreme Court of Oklahoma is acknowledged this 24th day of September, 1918.

T. B. Wilkens

County Attorney for Love County, Oklahoma, Attorney for Respondent.

In the Supreme Court of the United States

Coleman J. Ward, et. al.,
Petitioners,

vs.

The Board of County Commissioners of Love County, Oklahoma,
Respondent.

No.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petitioner, Coleman J. Ward, in his own behalf and for and in behalf of sixty-six (66) other persons similarly situated, joined with him in the proceeding, claimants and petitioners in the original cause and defendants in error in the Supreme Court of Oklahoma in the cause of *Board of County Commissioners of Love County, Plaintiff in Error,* v. *Coleman J. Ward, et al., Defendants in Error,* numbered 8356 therein, feeling themselves aggrieved by the order and judgment of the Supreme Court of Oklahoma, entered on June 11th, 1918, and re-affirmed on rehearing on July 23rd, 1918, which judgment reversed and set aside the judgment of the District Court of Love County, Oklahoma, in favor of plaintiffs, which decision and judgment of the Supreme Court of Oklahoma is the

final judgment of said court, and which, if unreversed deprives these plaintiffs of rights, immunities and privileges granted and secured to them under and by virtue of Treaties, Acts of Congress and the Constitution of the United States, hereinafter set forth, respectfully move this court for a *Writ of Certiorari* in said cause to the Supreme Court of Oklahoma for a review and reversal by this court of said order and judgment.

A certified copy of the entire record of said case in the Supreme Court of the State of Oklahoma is hereby furnished, attached to and made a part of this petition and marked exhibit "A" in compliance with rule 37 of this honorable court.

For cause herein petitioners respectfully show the court:

That by the Treaty between the United States and the Choctaw and Chickasaw Indians, contained in the Act of Congress, approved July 28th, 1898, 30 Statute at Large, 507, all lands allotted to the Choctaw and Chickasaw Indians were and are non-taxable, while the title remains in the original allottee not to exceed twenty-one years from the date of patent.

That the petitioners herein are citizens by blood of the Choctaw and Chickasaw nations, and were allotted lands in severalty under the terms of said Treaty within what is now Love County, Oklahoma, the particular tract allotted to each being set forth in the record in detail.

That preliminary to the admission of the territories of Oklahoma and Indian Territory into the Union, Congress, by the Enabling Act, approved July 16, 1906, 34 Stat. at L. 267, provided with reference to a proposed constitution for

the State of Oklahoma, that nothing contained in such constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said territory, so long as such right shall remain unextinguished, or limit or affect the authority of the Government of the United States, to make any law or regulation respecting such Indians, land, property or other rights by treaties, agreement or law, or otherwise, which it would have been competent to make if such Enabling Act had never been passed, thereby providing for the protection and carrying out of treaties and obligations with reference to the allotted lands of Indian citizens of the Five Civilized Tribes, including the lands of these Choctaw and Chickasaw Indians.

That disregarding the tax exemption under the Treaty and Act of Congress of July 28, 1898, 30 Stat. at Large 507, and relying upon Act of Congress of May 27, 1908, 35 Stat. at Large 312, entitled, "An Act for the removal of restrictions from a part of the lands of allottees of the Five Civilized Tribes, and for other purposes," which was invalid in so far as it made these lands taxable, the respondent county assessed for taxes and levied taxes on said allotted lands in 1908 and 1909. The Indian citizens of respondent county, and other counties so similarly situated, instituted suits of injunction in the state courts to restrain and enjoin the taxing of such allotted lands and from interfering with the rights and immunities of the Indian citizens secured to them under their said treaty with the Federal Government. The principal cases were *Choate et al.* v. *Trapp et al.*, and *Gleason et al.* v. *Wood et al.*, reported in 28 Okla. 502-517, but in these suits the trial courts and state Supreme Court held that under the said Act of Congress of May 27, 1908, 35 Stat. at Large

312, the lands were taxable and refused the relief sought. These actions were instituted in 1909 and were thereafter removed to the Supreme Court of the United States, where it was held in 1912 that the said Act of Congress of May 27, 1908, 35 Stat. at Large 312, in so far as it attempted to make the allotted lands taxable was invalid; that the said lands were exempt from taxation and such exemption was a vested right protected by the Constitution of the United States, Fifth Amendment (224 U. S. 665, 679, 680).

However, during the time these cases were in the courts the respondent county continued assessing for taxation and taxing the allotted lands in disregard of the rights and immunities of the allottees, threatening that if the amounts levied as taxes were not paid promptly, penalties of 18 per cent per annum would be imposed and the lands sold and two years after sale a deed would be issued to the purchaser at such tax sale. This was the procedure under the revenue law of Oklahoma, Art. 9, Chapter 98, Compiled Laws of Oklahoma, 1909.

The Indian citizens had no certainty of ultimate success in their suits then pending, and the penalty of 18 per cent per annum would go on accruing all the time that might be spent before final determination, and in the event it were adjudged that they had to pay, they would find the tax nearly doubled, and in the meantime would run the risk of having their lands sold and being deprived of them altogether. The summary remedy which was being resorted to by the respondent county and which the Indian citizen so far had been powerless to stop, caused him to yield in order to prevent the disadvantages and loss which might result and he protesting against the exactions was coerced into paying the amounts levied. The Indian citi-

zen was at a disadvantage, and could not deal with the county on equal terms.

This court having held in May, 1912, in the cases heretofore referred to (224 U. S. 665-679-680) that these allotted lands were exempt from taxation and that the counties should have been enjoined from collecting taxes thereon; that the Act of Congress of May 27, 1908, in so far as it attempted to make the lands taxable was invalid, and that the tax exemption was a vested right, the Indian citizens, these claimants, sought a return of the money exacted from them by coercion under the apparent authority of said invalid Act, and instituted this action. The District Court of Love County recognized their rights and rendered judgment in their favor for a return of the money on December 3, 1915 (certified transcript, pp 9 and 10), but the county appealed the cause to the Supreme Court of Oklahoma, which court on June 11, 1918, reversed the district court (certified transcript p. 210), and on July 23, 1918, denied these petitioners a rehearing therein (certified transcript p. 234).

Your petitioners further show that in the institution of the action they pleaded the Treaty contained in Act of Congress of June 28, 1898, 30 Stat. at Large 507, and the terms of the Enabling Act whereby the constitution was authorized to be made and adopted for the State of Oklahoma, 34 Stat at Large 267, urging that said treaty contained in the Act of June 28, 1898, conferred rights, privileges and immunities of tax exemption, the breach of which and right of recovery due them thereunder were protected in them by the Constitution and laws of the United States (certified transcript pp. 5-6). And further, they pleaded the cases of *Choate et al.* v. *Trapp et al.* and *Gleason et al.* v. *Wood et al.*, and the decisions therein of

the Oklahoma Supreme Court contained in Volume 28, Oklahoma Reports, at pages 502-517, wherein such court held that the said Act of Congress of May 27, 1908, 35 Stat. at Large 312, to be valid (certified transcript pp. 7-8 and 9).

And your petitioners also pleaded the decision and judgment of this court in the same cases, wherein this court determined that said Act of May 27, 1908, was invalid in so far as it sought to make these allotted lands taxable, reported in 224 U. S., page 665 (certified transcript p. 9).

The judgment of the Supreme Court of Oklahoma is based upon two grounds, the principal and controlling one being that the money paid by the petitioners on the allotted land, although non-taxable, in order to avoid a threatened sale and to avoid the imposition of penalties for failure to pay promptly were voluntary payments and in the absence of statutory authority same cannot be recovered back. The other ground being that in the absence of a statute imposing liability therefor, the county is not liable for taxes wrongfully collected which have been paid over to the State and municipal subdivisions thereof, other than the county against which the liability is sought to be imposed (certified transcript p. 211).

Your petitioners further show that in the petition for rehearing filed by them in the Oklahoma Supreme Court it was pointed out that the proposition to the effect that the county is not liable, in the absence of a statute, for money collected and turned over to the State and municipalities was and is not within the issues of the cause, and entirely without the case, because there never was any allegation or contention that the money collected in this controversy was

for the use and benefit of any other than Love County (certified transcript pp. 219-220), and your petitioners still so contend and insist and refer to the certified transcript at pages 6, 10, 11 and 12 to substantiate their contention.

And your petitioners further urged in their petition for rehearing as follows:

That the money was exacted from the Indian citizens contrary to the plans and policy of the Federal Government in dealing with them;

That the exaction of the money was in contravention of the rights secured under the Treaty contained in Act of Congress of June 28, 1898, 30 Stat. at L. 495-507;

That there was no power to tax the lands, hence no tax existed in fact, under the holding of this court in *Choate et al.* v. *Trapp et al.*, 224 U. S. 655, wherein it was determined that the Act of Congress May 27, 1908, 35 Stat. at L. 312 (under the authority of which the lands were taxed) was an invalid Act in so far as it attempted to make these lands taxable;

That the questions presented in the cause were and are of Federal cognizance and they must be determined in accordance with the Federal law;

That money paid under conditions like those in the instant case was paid under coercion as determined by this court in *A., T. & S. F. Ry. Co.* v. *O'Connor*, 223 U. S. 280;

That the decision of the Oklahoma Supreme Court denied the vested rights of the Indian citizens which were protected by the Federal Constitution;

That such decision deprived the Indian citizens of their

property without due process of law, in contravention of the Federal Constitution (certified transcript pp. 220-221).

It was further urged that these Indian citizens were wards of the Federal Government and not on equal footing with Love County, and that the inequality must be made good by superior justice; that the law is to be liberally construed in favor of the Indians because this has been the announced policy of the United States Supreme Court for more than one hundred years, such policy being set out in *Choctaw Nation* v. *United States*, 119 U. S. 28, and *Choate et al.* v. *Trapp et al.*, 224 U. S. 665 (certified transcript pp. 232-233).

Your petitioners show that, in the State of Oklahoma, counties may be sued under and by virtue of an express statute, which, in part, reads as follows:

> "Each organized county within the state shall be a body corporate and politic and as such shall be empowered for the following purposes:
>
> "First. To sue and be sued. * * *"
>
> Section 1947 Revised Laws, Oklahoma, 1910.

Your petitioners further show that the Supreme Court of Oklahoma, which by its decision hereinbefore mentioned, denied the claims of the petitioners, is the highest court of the State of Oklahoma in which a decision of said question may be had, and that said court erred in denying the rights asserted by your petitioners.

These petitioners assert that the decision of the Oklahoma Supreme Court denies to the Indian citizen the enjoyment of vested rights by invoking a *state* rule of public policy, denying relief for a wrong committed under the apparent authority of an invalid Act of Congress, because

there is no express state statute providing a remedy, when a matter of fact Congress removed from the realm of state sovereignty all authority of the State of Oklahoma to limit or impair the rights and remedies belonging to such Indian citizens under their treaties with the Federal Government.

Your petitioners show that the decision of the Oklahoma Supreme Court that the county shall retain the money had and received by it as taxes for the years 1909, 1910, 1911, 1912, *destroys the tax exemption for those years* by compelling the Indian citizen to pay money as taxes during such time, and decides, in effect, that *during such particular years the allotted lands were taxable.* Thus the question of tax exemption in this cause raised under the Treaty contained in Act of Congress of July 28, 1898, 30 Stat. at L. 495-507, was erroneously decided by such court, and a decision of such question was necessary to a final judgment herein.

The petitioners further show that they were and are wards of the Federal Government, and that such government has expressly reserved the right and authority to deal with and protect the rights of such Indian citizens, and in so doing has adopted policies of liberality due by reason of the relative positions of the government on one side and a dependent race on the other, the inequality being made good by superior justice, looking to the substance of the right, without regard to technical rules framed under a system of jurisprudence, formulating rights and obligations of persons *equally* subject to the same laws. And these petitioners assert that the decision of the Supreme Court of Oklahoma denies them the use and enjoyment of their vested right of tax exemption under their Treaty with the Federal Government, by invoking a harsh and technical rule of forfeiture, formulated by it and upon which it bases and excuses the retention of the money, coerced and extorted

from them, contrary to and in defiance of the Federal Constitution and laws, which retention utterly destroys the tax exemption immunities for and during the years it is imposed, and overrides and thwarts the plan and policy of the Federal Government in dealing with and controlling its Indian wards.

Wherefore, your petitioners pray that this Court send to the Supreme Court of Oklahoma its *writ of certiorari*, commanding said court to certify to this Court the record and proceedings in said cause; that this Court will review the said decision, order and judgment of said Supreme Court of Oklahoma which reversed the trial court, and that this Court will send its mandate to the Supreme Court of Oklahoma directing said court to vacate and set aside its said decision, order and judgment and to affirm the judgment of the District Court of Love County, Oklahoma, herein.

J. E. Bennett

Fred P. Glass

Estelle Bellamy Bennett

Attorneys for Petitioners.

VERIFICATION.

State of Oklahoma, }
Oklahoma County, } ss.

J. E. Bennett, being duly sworn, says that he is one of the counsel for petitioners herein; that he assisted in preparing the foregoing petition and knows the contents thereof; that the allegations of said petition are true as he verily believes.

J. E. Bennett

Subscribed and sworn to before me by J. E. Bennett on this 27th day of September, 1918.

Beatrice Givan

Notary Public.

My commission expires June 11, 1921

(Seal)

Supreme Court of the United States

October Term, 1919

No. 224

COLEMAN J. WARD ET AL., *Petitioners,*

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LOVE COUNTY, OKLAHOMA, *Respondent.*

On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

ANSWER BRIEF OF PETITIONERS ON MOTION TO DISMISS.

J. E. BENNETT,
GEO. P. GLAZE,
ESTELLE BALFOUR BENNETT,
Attorneys for Petitioners.

Oklahoma Law Brief Company, 119½ West First Street, Oklahoma City

AFFIDAVIT OF SERVICE OF BRIEF.

tate of Oklahoma, Oklahoma County—ss.

Geo. P. Glaze being duly sworn says that he is one of ie attorneys for petitioners in *Coleman J. Ward et al., Petiioners,* v. *The Board of County Commissioners of Love ounty, Oklahoma, Respondent,* pending in the United States upreme Court; that on December 27, 1919, he deposited in ie United States mail at Oklahoma City, Oklahoma, post ffice, a copy of the within annexed brief of petitioners, ddressed to T. B. Wilkins at Marietta, Oklahoma, postage repaid, and caused the same to be transmitted by registered ail; that T. B. Wilkins is County Attorney of Love County, klahoma, and attorney for respondent in said cause; that larietta is the county seat of said county and the proper ddress of said attorney for respondent, and is six hours istance, in time, by mail, from Oklahoma City.

.....

Subscribed and sworn to before me December 27, 1919.

.....

Notary Public of Said County and State.

My commission expires November 25, 1922.

Service of the following brief opposing motion to dis-ss is acknowledged this 27th day of December, 1919.

.....

Of Counsel for Respondent.

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Supreme Court of the United States

October Term, 1919

No. 224

COLEMAN J. WARD ET AL., *Petitioners,*

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LOVE COUNTY, OKLAHOMA, *Respondent.*

On Writ of Certiorari to Supreme Court of Oklahoma.

ANSWER BRIEF OF PETITIONERS ON MOTION TO DISMISS.

STATEMENT.

The petitioners have been served in this cause with notice that certain attorneys on the 5th day of January, 1920, as *amicus curiae*, will file their motion to dismiss this cause in the Supreme Court of the United States on three grounds set forth in said motion.

With the notice appears two motions, one for permission to file a brief in the cause in support of the contentions of the respondent, Love County. The other motion is to dismiss the *writ of certiorari* and the cause. An examination

of the motions and the service discloses that they are not made on behalf of Love County, the respondent.

The two motions, to which is annexed a brief, which are to be submitted to this Court, are by the Board of County Commissioners of Coal County, Oklahoma; the first motion asserts that Coal County is directly interested in the question to be determined, and therefore asks that such Board of Commissioners be permitted to file a brief as *amicus curiae* in support of the respondent's position. The next motion is made by the Board of County Commissioners of Coal County by Clinton A. Galbraith and George Trice, its attorneys, and asks the Court to dismiss the writ and proceedings. Messrs. Galbraith and Trice also appear as attorneys for the Commissioners of Coal County in the first motion.

Following these motions appears a notice to the petitioner herein that the Board of County Commissioners of Coal County as *amicus curiae* will present the motion to dismiss, on January 5, 1920.

Following these motions and the notice appears a brief on behalf of the respondent on the motion to dismiss. This brief is over the names of Messrs. Galbraith and Trice as attorneys for the respondent, and six other attorneys as of counsel for respondent.

It thus appears that the respondent is to be well and fully represented in this Court by competent attorneys and counsellors, and we cannot see wherein this Court can be aided in the matter by permitting two of said attorneys for respondent to appear in the role of *amicus curiae* also.

Messrs. Galbraith and Trice should be, and probably

are, just as willing and anxious to inform this Court as to the law while appearing as attorneys for respondent as they would be in the position of *amicus curiae*. This being the case, the question arises, what benefit or aid to the Court of the gentlemen acting at the same time in a dual capacity?

The Board of Commissioners of Coal County has no direct interest in the controversy, and its appearance here can have no beneficial result, but on the other hand causes needless vexation and expense to the petitioners. Coal County asks permission to file a brief. Counsel for petitioners respectfully submit that there is no need of it. The same attorneys appear also for the respondent, therefore nothing can be added or gained.

Coal County, without asking permission of this Court to appear for any other purpose than filing a brief, presents a motion to dismiss. No deceit, collusion or fraud is charged and counsel for petitioners feel that such motion by a stranger is only an unwarrantable interference, and therefore such motion should not be considered.

We fully appreciate that the matter of permitting the appearance of *amicus curiae* herein is solely within the discretion of this Court, but we feel assured that this Court will not permit strangers to appear in the proceeding when no aid can be rendered the Court by so doing.

Messrs. Galbraith and Trice have appeared as of counsel for the respondent in the case of *Broadwell, Petitioner* v. *Board of County Commissioners of Carter County, Respondent*, No. 289, of the October, 1919, term of this Court in a motion to dismiss and a brief in support thereof

which they sought to present to this Court December 15, 1919.

The identical question raised in case No. 289 just referred to is raised in this case, and the same array of attorneys and counsel appear in both cases, occupying, however, different positions. Some who were attorneys in one case appear as of counsel in the other, and vice versa. The matter presented in the Carter County case is, at this time, before this Court, and for this additional reason there is no necessity of the appearance of attorneys as *amicus curiae* herein.

Before entering upon the discussion of the question which arises in this cause, should this Court determine to consider the motion of Coal County to dismiss, the petitioners herein desire to observe that a reading of the record will disclose a different state of facts in some particulars than set up by attorneys for respondent. However, petitioners will content themselves with the observation that C. A. Greenlees, who was an interested party in this cause, is not the sole petitioner herein. This action was instituted and carried through the courts of the State of Oklahoma by some 67 Indian Citizens of the Choctaw Nation, among whom was Coleman J. Ward, in whose name these proceedings has at all times been conducted. The parties were all similarly situated and the causes are joined under the provision of the statute of the State of Oklahoma relating to joinder of parties, the statute referred to being Section 4690 of the Revised Laws of Oklahoma, 1910, reading as follows:

"When the question is one of common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

It is also to be observed that each of these respective Indian citizens is directly interested in the result of this action, since its final determination will result in securing the benefits of the treaty exemption from taxation as provided by the terms of the Choctaw and Chickasaw Treaty (Act of Congress June 28, 1898, 30 Stat. at L. 495-507). The provisions of the Federal Act referred to guarantees to these claimants exemption from taxation of their allotted lands for a period of 21 years from the date of their patent, which period of exemption has not even at this time expired.

ARGUMENT.

The motion to dismiss is based upon three purported grounds:

I.

"There is no Federal question decided in the case."

II.

"The state court decided the case against the petitioners on a matter of general law broad enough to sustain the judgment, and did not determine a Federal question adversely to them."

III.

"Even if the state court had decided a Federal question

against the petitioners, nevertheless it decided against them also upon independent grounds not involving any Federal question and broad enough to support the judgment and for this reason the Federal question will not be considered."

These several assignments embody but one general proposition, to-wit, that there is no controlling Federal quesetion involved in this case.

Answering this point counsel for petitioners desire to direct the attention of the court to the fact that there are several dominating and controlling Federal questions involved in this action. We present our theory of the Federal aspect of this case under two heads, namely: First, the contract clause of the Federal Constitution; second, the "equal protection" clause and the "due process" clause of the Federal Constitution.

The Contract Clause.

In 1898 Congress ratified the treaty of the Choctaw and Chickasaw Tribes of Indians (Act of Congress June 28, 1918, 30 Stat. at L. 495-507). This provision of the Federal statute was before the United States Supreme Court in the case of *Choate et al.* v. *Trapp et al.*, 224 U. S. 665-679, and it was by the court in that case determined that the exemption from taxation of the land allotted the Indian Citizens constituted a vested right.

Subsequent to the treaty and Act of Congress referred to the Territory of Oklahoma enacted certain taxing laws, the date of which is not material here for the reason that the taxing laws referred to were not operative in the Indian Territory, but with the advent of statehood these

laws extended over the entire State of Oklahoma and were invoked against the property of these petitioners, and as shown in the record generally, and taxes were enforced upon their lands. This suit was instituted to recover the money so paid, and it was alleged in the first instance that the taxes were collected in violation of the vested rights of exemption contained in their treaty with the Federal Government. See record page 6. It was further stated that the same were paid under duress, compulsion and coercion. See record pages 6 to 12, inclusive.

The effect of the decision of the Supreme Court of Oklahoma in this cause denies all relief to petitioners upon their demand for such refund. The theory of the respondent, which has always been contended for by Love County and supported by the decisions of the Supreme Court of Oklahoma, has been that the taxes were voluntarily paid and therefore not recoverable. This theory is a state rule of public policy, based upon the idea that the state should not be disturbed in the progress of the collection of revenue.

The taxing laws of the State of Oklahoma were enacted subsequent to the granting of the exemption, which in the *Choate* v. *Trapp* case, *supra*, was held to be supported by a valid consideration, if indeed any were necessary. *The denial of relief here is a denial of all relief under their vested rights, and operates to impair by subsequent state legislation the contract of exemption entered into between the Federal Government and the Choctaw-Chickasaw Indians.* It is pertinent to observe that the State of Oklahoma made itself a party to this contract by its own Con-

stitution. See Sec. 6, Art. 10, Constitution of Oklahoma, providing that "such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States Government, or by Federal laws, during the force and effect of such treaties or Federal laws, shall be exempt from taxation."

The theory of petitioners is, that the right of recovery herein rests upon a violation of their vested rights which denies them a right, title, privilege and immunity claimed by them under the laws of the United States. The petitioners contend that the decision of the Supreme Court of Oklahoma operates to impair and deny their treaty contract of exemption within the Contract Clause of the Federal Constitution.

See *Choate* v. *Trapp*, U. S. 665-679.
New Jersey v. *Wilson*, 7 Cranch 164, 3 L. Ed. 303.

In *Bronson* v. *Kinzie et al.*, 1 How. 311, the Court said:

"But it is manifest that the obligation of the contract, and the rights of the parties under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. * * *"

"The remedial part of the law is so necessary a consequence of the former two, that laws must be very vague and imperfect without it. For, in vain would rights be declared, in vain directed to be observed, if there be no method of recovery and asserting those rights when wrongfully withheld or invaded. This is what we mean when we speak of the protection of the law * * *."

"We have quoted the entire paragraph, because it shows, in a few plain words, and illustrated by a former example, the connection of the remedy with the right. It is a part of the municipal law which protects the right, and the obligation by which it enforces and maintains it. It is this protection which the clause in the Constitution now in question mainly intends to secure. And it would be unjust to the memory of the distinguished men who framed it, to suppose that it was designed to protect a mere barren and abstract right without any practical operation upon the business of life. It was undoubtedly adopted as a part of the Constitution for a great and useful purpose. It was to maintain the integrity of contracts, and to secure their faithful execution throughout this Union, by placing them under the protection of the Constitution of the United States. And it would but ill become this court, under any circumstances, to depart from the plain meaning of the words used and to sanction a distinction between the right and the remedy which would render this provision illusive and lucatory; mere words of form affording no protection and producing no practical results."

See also:

White v. *Hart*, 13 Wallace 646-654.
Green v. *Biddle*, 5 Peters 369.
Von Hoffman v. *Quincy*, 4 Wallace 552.
Ogden v. *Saunders*, 12 Wheaton 231.
Fletcher v. *Peck*, 6 Cranch 87.
Sturgis v. *Crownshield*, 4 Wheaton 122.
Beers v. *Haughton*, 9 Peters 359.
McCracken v. *Hayward*, 2 Howard 612.
Planters Bank v. *Sharp*, 6 Howard 327.

The "Equal Protection" and the "Due Process" Clauses.

The tax laws of the State of Oklahoma were not only void in their operation upon the property of these petitioners, but were in absolute violation of the Federal Constitution. Notwithstanding this fact, under the purported operation of the tax law these petitioners have been coerced and deprived of their property. In the courts of the State of Oklahoma they were met at all times with the defense, that notwithstanding the illegality and the manifest injustice of the actions on the part of the taxing authorities, the payments are voluntary and not recoverable.

It is the contention of petitioners that when the courts of Oklahoma excuse the retention of the money taken from them in this case, by invoking a state rule of public policy, namely, the theory of voluntary payment and the theory that a decision based upon the state construction constitutes a state question, operates by law to deprive them of their property without due process of law, and to deny them the equal protection of the law, guaranteed by the Federal Constitution.

In the case of *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. p. 36, the court said:

> "The provisions of the 14th Amendment are not confined to the action of the State through its legislature, or through the executive or judicial authority. Those provisions relate to and cover all the instrumentalities by which the state acts, and so it has been held that whoever, by virtue of public position under a state government, deprives another of any right protected by that Amendment against deprivation by the state, violates the constitutional inhibition; and as he

acts in the name of the state and for the state, and is clothed with the state's powers, his act is that of the state. *Chicago, B. & Q. R. Co.* v. *Chicago,* 166 U. S. 266, 41 L. Ed. 979, 17 Sup. Ct. Rep. 581. Following the above case, the Federal courts through the country have frequently reviewed the action of taxing bodies, when, under the facts, such action was in effect the action of the state, and therefore, reviewable by the Federal courts by virtue of the provisions of the Amendment in question. See *Nashville, C. & St. L. R. Co.,* v. *Taylor,* 86 Fed. 168; *Louisville Trust Co.,* v. *Taylor,* 46 C. C. A. 299, 107 Fed. 305. In the last case, which related to enjoining the collection of alleged illegal taxes by reason of discrimination, the court said: 'It may be conceded that, if the allegations of the bill are made out, there exists, in respect to the property of complainant and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases, Federal jurisdiction will arise because of the equal protection of the laws guaranteed by the 14th Amendment.' "

In the case of *Ex parte Commonwealth of Virginia,* 100 U. S. 339-370, 25 L. Ed. 676-680, this Court further said:

"We have said the prohibitions of the 14th Amendment are addressed to the States. They are 'No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States. * * * Nor deny to any person within its jurisdiction the equal protection of the laws.' They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that

action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The Constitutional provision, therefore, must mean that no agency of the State or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the Constitutional inhibition, and as he acts in the name and for the State and is clothed with the State's power, his act is that of the State. This must be so, or the Constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to anull or to evade it.

"But the constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons and to insure to all persons the enjoyment of such rights. Power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not the abstract thing denominated a State, but upon the persons who are the agents of the State in the denial of the rights which were intended to be secured."

In *Bronson* v. *Kinzie*, *supra*, the Supreme Court said:

"The REMEDIAL PART OF THE LAW IS SO NECESSARY A CONSEQUENCE (of the former two), that laws must be very vague and imperfect without it. For, in vain would right be declared, in vain directed to be observed, if there were no method of recovering and asserting those rights when wrongfully withheld or invaded. This is what we mean properly when we speak of the protection of the law."

Petitioners respectfully suggest to the Court, under the authority of *Atchison T. & S. F. Ry. Co.* v. *O'Conner*,

223 U. S. 280, and *Union Pacific Ry. Co.*, v. *Public Service Commission*, 248 U. S. 67, that the voluntary payment theory upon which the respondent would defeat and destroy the vested right of petitioners, is not the law, and upon such theory counsel for respondent cannot successfully maintain in this court the right of Love County to retain money in its hands wrongfully received by it which in equity and good conscience it is not entitled to retain.

It was early laid down, as a rule, by this Court, that counties could not retain money which had been received contrary to law, for we read in *Louisiana* v. *Wood*, 102 U. S. 294-299, as follows:

> "As we took occasion to say in *Marsh* v. *Fulton County*, 10 Wall. 676, 'the obligation to do justice rests upon all persons, natural and artificial, and if a county obtains money or property of others without authority, the law, independent of any statute, will compel restitution or compensation'."

This case was followed by *Chapman* v. *County Commissioners*, 107 U. S. 348, wherein this Court, after quoting the foregoing, also held that the county had the money as a trustee for the party paying it.

Answering Respondent's First Point.

The first point is set out on pages 12 to 20 of the brief and is devoted to an attempt to show that the Oklahoma Supreme Court decided against the petitioner on a matter of state practice and procedure. It is there stated that because the amounts of money paid by the Indian Citizens were not itemized that the State Supreme Court determined that no recovery could be had.

Counsel for petitioners assert that no question of practice or procedure was determined by the State Supreme Court. The only points of law decided by the Oklahoma Supreme Court are contained in the two paragraphs of the syllabus.

The law of Oklahoma provides that a syllabus of the points of law decided in any case in the supreme court shall be stated in writing by the justice writing the opinion of the court, and shall be confined to the points of law arising from the facts in the case that have been determined by the court, and it shall not be altered unless by consent of the justices concurring therein. The syllabus of the case as determined by the Oklahoma Supreme Court is set out on page 211 of the record, and is also shown at pages 13 and 14 of the brief of respondent. Nothing contained in either paragraph refers to the fact that the money paid by these petitioners was not set out in sufficient detail in the petition.

Section 5260, Revised Laws of Oklahoma, 1910, reads as follows:

> "5260. Syllabus. A syllabus of the points of law decided in any case in the supreme court shall be stated, in writing, by the justice delivering the opinion of the court, and filed with the papers of the case, which shall be confined to points of law arising from the facts in the case, that have been determined by the court; and the syllabus shall be submitted to the justices concurring therein; and a copy of such syllabus shall, in all cases, be sent to the court below by the clerk of the supreme court, with the mandate provided for by Section 5258."

From the foregoing it must be evident to the court

that the only propositions of law decided by the Oklahoma Supreme Court are contained in the syllabus of the case heretofore referred to, and that no question of state practice or procedure was in issue or decided. It must further appear that any statements of the judge who wrote the opinion with reference to the payments not being itemized so as to determine what portion was received by the county is purely *dicta,* and the cases cited by respondent under the first point can have no application in the matter now before this Court.

Answering Respondent's Second Point.

Under this subdivision it is asserted, commencing on page 21 of the brief, that the case was decided against the petitioner on a matter of general law broad enough to sustain the judgment, and did not determine a Federal question adversely to him.

The general law which the respondent sets out is that the state supreme court held that the money was voluntarily paid, and for that reason cannot be recovered back.

These Petitioners have from the first, and still are urging, that the judgment of the Oklahoma State Court takes away and destroys a right and an immunity which existed under and by virtue of a treaty and a statute of the United States.

All of which was specifically set up and pleaded.

The state supreme court as a matter of fact based its judgment wholly upon a state rule of public policy and ignored the vested rights and immunities existing by virtue of the treaty and Federal law which petitioners specially set up.

This court has a number of times determined that a state court cannot, by resting its judgment upon some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, if a Federal right or immunity specially set up or claimed which, if recognized and enforced, would require a different judgment.

Chicago, B. & Q. Ry. Co. v. *People of Illinois, ex rel.*, 200 U. S. 561.
West Chicago Ry. Co. v. *People of Illinois, ex rel.*, 201 U. S. 506.
Sage v. *Hempe*, 235 U. S. 99.
Joy v. *St. Louis*, 201 U. S. 332.
Talbot v. *First Nat'l. Bank*, 185 U. S. 172.
Missouri, K. & T. Ry. Co. v. *Elliott*, 184 U. S. 530.
McCullough v. *Virginia*, 172 U. S. 102.
Murray v. *Charleston*, 96 U. S. 432.
Curran v. *Arkansas*, 56 U. S. 304.

The Oklahoma Supreme Court in denying a recovery in this cause upon the ground that the money was voluntarily paid destroyed the vested right of the petitioners, for, as we have seen, to take away the remedy destroys the right; therefore, the result has been that the vested right of exemption from taxation during the particular years for which respondent county collected the money as taxes on the lands, has not only been invaded, but has been complete destroyed.

Under a subdivision of the second point respondent's brief asserts that the only Federal question contended for by the petitioners was decided in their favor, which was that the lands were non-taxable under the treaties and

Act of Congress, and that this concession and admission by the state court does not give this court jurisdiction to review the decision of the state court.

There was nothing in issue in this cause as to the lands being exempt from taxation at all times, for the reason that prior to the commencement of these proceedings this court had handed down its decision in the case of *Choate et al.* v. *Trapp et al., supra,* which was referred to and pleaded by petitioners from the beginning.

The Supreme Court of Oklahoma in this cause held against the petitioners in every proposition contended for which was put in issue. The proposition which counsel for respondents say is the only Federal question contended for by the petitioners ceased to be a question after the decision by this Court in *Choate et al.* v. *Trapp et al., supra,* in 1912.

In a second subdivision of point two, commencing on page 24 of the brief, the question of whether money paid under the circumstances shown to exist in the case at bar was voluntarily paid and whether a Federal question was determined by the state supreme court in its holding thereon.

The respondent urges under this subdivision that the Indian lands in question were not subject to the tax imposed and, therefore, the payments necessarily were voluntary, and cites in support thereof the case of *Garr Scott & Co.* v. *Shannon*, 223 U. S. 468, which case determines that the payment of the tax by one who was not included in a class to which the law applies could not be under duress, but a voluntary payment.

The above mentioned case is not applicable in the matters now at issue for the reason that these Indian lands were in fact wrongfully included within the class to which the state taxing laws attached.

At the time Love County sought to obtain revenue from these lands, it contended that the tax exemption contained in the treaty and the Act of Congress was no longer in force and effect, and that the lands were subject to taxation under the general laws of the state equally with the property of all persons. The courts of the State of Oklahoma sustained this contention, both the trial court and the supreme court. It was only after the cases brought by the Indians to prevent the taxing of their lands had been removed to this Court that they were afforded any relief. This was in 1912, when the court decided *Choate et al.* v. *Trapp et al.*, and the companion cases.

The position of Love County appears very inconsistent. When it desired to force revenue from the Indian lands it then said that the lands were taxable under the State law, and after it had obtained the money through coercive means and a recovery was sought, then the county says, your lands were never taxable under the State law, therefore, the money was voluntarily paid and a recovery cannot now be had. It would appear that Love County was now estopped from setting up such a defense when a recovery is sought.

The respondent cites a number of Oklahoma decisions in order to convince this court that these lands were not taxable under the state law *at the time* the payments com-

plained of were made. These cases are set out on pages 29, 30 and 31 of the brief.

Not a single one of the cases cited by counsel for respondent was so decided until after this court determined the case of *Choate et al.* v. *Trapp et al.*, 224 U. S. 665, in May, 1912.

Respondent's brief sets out an Oklahoma statute and also quotes from the Constitution of the State in an effort to show that the lands were not taxable at such time.

The court will observe the Constitution of the State provides that such property that may be exempt by reason of treaty stipulations existing between the Indians and the United States Government or by Federal laws *during the force and effect of such treaties or Federal laws,* shall be exempt from taxation. To the same effect is the Oklahoma statute.

In 1909, when Love County sought to enforce its claim of revenue from these lands by taxing them, the respondent county decided that the treaties and Federal laws exempting the lands from taxation were *no longer in force and effect.*

When the Indians sought to prevent the taxation of the lands, the trial courts of Oklahoma sustained the contention that the lands were no longer exempt from taxation, and the Supreme Court of the State affirmed the trial courts, holding that Section 4 of the Act of Congress of May 27, 1908 (35 Stat. at L. 312-13), *terminated the exemption from taxation provided for in the treaty between the Choctaw and Chickasaw Indians and the United States, and that such exemption was no longer in force and effect,* and further *that these lands were taxable under the State*

law of Oklahoma the same as all other lands of the State. The principal decisions of the Oklahoma State Court wherein it so held are reported in Vol. 28, Oklahoma Reports, at pages 502 and 517.

There were four cases decided by the Supreme Court at such time, they being *Choate et al* v. *Trapp et al., Gleason et al.* v. *Wood et al., Alexander* v. *Rainey* and *English* v. *Richardson.*

The earliest decision of the Oklahoma Supreme Court to the contrary was determined in September, 1912, being that of *Whitmire* v. *Trapp,* 33 Okla. 429, and this case was followed by *Weilip* v. *Audrain,* 36 Okla. 288, determined in November, 1912. *Leiber* v. *Rogers,* 37 Okla. 514, was decided in June, 1913, and following next was the case of *Wood* v. *Gleason,* 43 Okla. 9, decided in April, 1914. All four of these cases were predicated upon the holding of this court in *Choate et al.* v. *Trapp et al.,* 224 U. S. 665, and the State case of *Wood* v. *Gleason,* 43 Okla. 9, was a continuation of the case of *Gleason et al.* v. *Wood et al.,* which originated in Pittsburg County, Oklahoma, and afterwards reached this court, being determined at the same time as the case of *Choate et al.* v. *Trapp et al.*

The case of *Marcey* v. *Board of Commissioners,* 45 Okla. 1, and *McGeisey* v. *Board of Commissioners,* 45 Okla. 10, were decided in November, 1914. *Davenport* v. *Doyle,* 57 Okla. 341, was decided in April, 1916, and *Hutchinson* v. *Brown,* 167 Pac. 624, in October, 1916.

From the foregoing we cannot conceive how counsel for respondent expected to convince this court that the Supreme Court of the State had determined at the time

of the payments concerned in this cause, that the lands were not taxable.

Petitioners believe that this Court will readily see the distinction between the facts in the case of *Garr Scott & Co.* v. *Shannon, supra,* and the facts in the case at bar. The courts of Oklahoma wherein the land was situated had determined that the force and effect of tax exemption provided for in the treaty had been terminated by an Act of Congress, and that the lands were taxable under the state law equally with the lands of all persons. Thus the courts had determined that the allotments of these Indians were in the class to which the State taxing laws applied, and such Indian citizens, fearing that their lands would be taken from them if the tax was not paid, or at least if their taxes were not paid promptly the amount would be considerably increased by the heavy penalties of the State law, and while still contending that the lands were exempt, they unwillingly and through fear, and protesting at the time, paid the amounts levied against their land and continued the prosecution of their suits to the National Supreme Court, where they obtained relief for the first time in 1912.

The case of *Davenport* v. *Doyle,* 57 Okla. 341, which was decided by the Oklahoma Supreme Court in April, 1916, and which has been referred to by counsel for respondent, shows how far the taxing machinery provided for by the State laws of Oklahoma was operative against the Indian Citizens. In that case we are told by the Supreme Court of Oklahoma that the lands of an Indian minor were assessed for taxation and taxes levied thereon by Okfuskee County, Oklahoma, but the taxes so

levied upon the minor's property were not paid for the year 1909; that in June, 1910, the lands were sold by the county for such taxes, and thereafter, a tax deed to the land was issued to one Davenport, who entered into possession of the land. The action was brought in 1913, after this Court had declared that all such lands were exempt from taxation, and finally in 1916 the Supreme Court of Oklahoma determined that the tax deed was void, and all attempts to tax the lands and the sale thereof for taxes were nullities, reference being made to the decision of this Court in *English* v. *Richardson*, 224 U. S. 680, which was rendered at the same time as that of *Choate et al.* v. *Trapp et al., supra.* It must be evident to this Court that the taxing authorities of the counties in Oklahoma were going to the fartherest extent of the state law to enforce the payment of taxes to the county upon these Indian lands. In the *Davenport* v. *Doyle* case the minor was deprived of a valuable property right, the possession and enjoyment of his land for a number of years.

So far as the State taxing law of Oklahoma was concerned, in view of the decisions of the trial courts and the Supreme Court of the State that these Indian lands were not exempt, but were subject to taxation under the general laws of the State equally with the property of all persons, these Indians and their lands *were included in the class to which the State taxing laws with its penalties and its forfeitures was in fact applied,* and these Indians and their lands *remained in that class to which the state law was applied, until this court reversed the state supreme court in* 1912. Counsel for petitioners feel that the case of *Garr Scott & Co.*, v. *Shannon, supra,*

is not applicable to the matters in issue in the manner in which counsel for respondent desire to apply it. In that case it is also said that if the plaintiff had been included in the class to which the statute applied and under the duress of its automatically enforced provisions had paid the taxes to avoid the disruption of its business, it could have maintained an action to recover the amounts exacted.

In the present case, not only had the courts of the state determined that the lands were subject to taxation under the general laws of the state equally with the property of all persons, but the respondent, Love County, actually levied the taxes upon the lands, which was an encumbrance and a cloud upon the title, and the courts of Oklahoma refused to prevent such action or to remove such encumbrance until after this Court had spoken.

On page 35 of their brief, counsel states that even if the allotments had been taxable, there was no such drastic consequences attached to their non-payment so as to make their payment one under duress, citing three cases from this Court, but petitioners in answering refer to the facts and circumstances in the case of *Davenport* v. *Doyle*, 57 Okla. 341, as a sample of how drastic were the consequences. Counsel feel that the consequences were even more drastic than in the case at *Atchison, Topeka & Santa Fe Ry. Co.* v. *O'Conner*, 223 U. S. 280.

Respondent on pages 36 and 37 of the brief cite *Phillips* v. *Board of Commissioners*, 5 Kans. 412, and *Lamborn* v. *Board of Commissioners*, 97 U. S. 181, in order to show that the payment of taxes upon exempt Indian lands are voluntary payments.

The decision in the case of *Lamborn* v. *Board of Com-*

missioners was so decided for the sole reason that the Supreme Court of Kansas had prior to that time decided that way, and this Court stated that *it was the law of Kansas which the state court was called upon to administer, and that because of the settled decision of the state court, it decided in accordance therewith.* This was the law of Kansas as determined by its Supreme Court up to 1878.

But since the Kansas cases referred to by this Court in the Lamborn case, the Supreme Court of Kansas has been called upon several times to decide cases involving the same legal proposition, and we find that the Kansas court has since repudiated its earlier holding. In *Ottawa University* v. *Board of Commissioners*, 116 Pac. 892, determined in 1911, we find that the former decisions in that state are reviewed, and the court in such case holds contrary to the earlier decisions and determines that a payment of money very like the circumstances in the present case against Love County, was not a voluntary payment. And inasmuch as the taxes in the Kansas case were an illegal exaction they must be repaid. In this case Franklin County attempted to collect taxes on lands belonging to the University. The management of the University claimed the lands were exempt, and in order to avoid the heavy penalty for non-payment of taxes provided by the Kansas law, the management of the University paid the taxes demanded, protesting against the legality of same, and brought suit to recover back the money. This later determination by the Kansas Supreme Court overrules *Phillips* v. *Board of Commissioners*, and inasmuch as the law of Kansas as determined by its supreme court has been changed, the Lamborn case heretofore determined by this court can have

no bearing upon the matters now in issue. Then again the case of *Lamborn* v. *Board of County Commissioners, supra,* should be compared with the late case of *Atchison, T. & S. F. Ry. Co.* v. *O'Conner, supra.*

Money paid under the circumstances as in this cause are without a doubt paid under coercion and duress and are not voluntary.

Atchison, T. & S. F. Ry. Co. v. *O'Conner,* 223 U. S. 280.
Union Pac. Ry. Co. v. *Pub. Serv. Com.,* 248 U. S. 67.
Patton v. *Brady,* 184 U. S. 608-614.
Robertson v. *Frank Bros.* 132 U. S. 17-27.
Swift & Co. v. *United States,* 111 U. S. 22-28.
Maxwell v. *Griswold,* 51 U. S., 10 How. 242-256.
Cox v. *Lott,* 12 Wall. 204-220.
Harreld v. *Kann,* 159 Fed. 608-614.

In considering whether this Court should take jurisdiction of the case at bar, it will take notice of the fact that the guardianship of the Indian did not cease when an allotment was made, as is set out in *Tiger* v. *West. Development Company,* 221 U. S. 286. They are still members of an inferior and dependent race and as was said in *United States* v. *Allen,* 179 Fed. 13, that clothing them with citizenship did not change their character or invest them with full industrial capacity, they still being wards of the government. It seems to counsel for petitioners that *to tax these lands, and enforce the collection of the same, virtually destroys the authority of the National government to protect its Indian wards.*

In *Choctaw Nation* v. *United States,* 119 U. S. 1-28,

this Court said that the recognized relation between the parties to the controversy was that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorized the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes on the other hand such an interpretation of their acts and promises as justice and reason demands in all cases where power is exerted by the strong over those to whom they owe care and protection. This court said that the Indian and the government are not on equal footing, and the inequality is to be made good by superior justice which looks only to the substance of the right without regard to technical rules framed under a system of municipal jurisprudence formulating the rights and obligations of private persons equally subject to the same laws.

We contend that the judgment of the state supreme court ignores the vested rights of the Indian Citizens which are protected from infringement and destruction by the Federal Constitution, by permitting Love County to unlawfully extort money under the contention that it was lawfully due as taxes, which contention was sustained at the time by the Supreme Court of the State, and when it is sought to recover such money so coerced, recovery is denied on the ground that the Indian Citizens knew at the time that the money was not lawfully due, but voluntarily paid same to such county.

The said judgment ignores that a governmental instrumentality was interfered with and set at naught by Love County, and the plan of the Federal Government for the elevation of the Indians of the Five Civilized Tribes was thwarted in permitting Love County to utterly destroy

the exemption for and during the years the taxes were so wrongfully exacted, and such judgment ignores the fact that the money collected by coercion by Love County was in violation of a contract between the United States and the Indian citizen, and places the United States in the position of permitting its contract to be repudiated on its side, and breaking faith with its wards to whom it owes the highest degree of care and superior justice.

Said judgment in denying a remedy for the invasion and destruction of the vested property rights denies in effect such property rights, although existing under and by virtue of a treaty with the Federal Government and a Federal statute, which rights are protected by the Federal Constitution, and hence, this judgment of the state court is one for review by the National Supreme Court.

Said judgment overlooks the fact that although Love County wrongfully coerced the payment of the money from the Indian Citizens, it did so in accordance with the law as settled by the state supreme court at such time, yet in violation of Federal law, and that a remedy for such violation of the Federal law is not to be determined under a state rule of public policy.

Said judgment in denying a recovery from Love County of money wrongfully and unlawfully coerced from Indian Citizens through interference with and destruction of a vested right of tax exemption by means of judicial duress, created by erroneous judgments of the state judiciary, also denies and sets at naught every right and immunity under the Federal Constitution, the guarantees of the Federal Government to its Indian wards, and every vestige of honesty, right, justice, fair dealing and Christian morals

which the Federal Government has for more than an hundred years endeavored to teach its dependent people.

In *Ballinger* v. *Frost*, 216 U. S. 240, we read from the opinion of Mr. Justice Brewer, as follows:

> "Whenever in pursuance of the legislation of Congress, rights have become vested, it becomes the duty of the courts to see that these rights are not destroyed, by any action of an executive officer, even the Secretary of the Interior, the head of a Department."

From the foregoing it appears that this Court has already declared it to be the duty of the courts to see that vested rights are not destroyed even by a member of the President's Cabinet, and in the case at bar, as the courts of the State of Oklahoma have permitted the vested rights of the Indian Citizens to be invaded and destroyed by Love County, counsel for petitioners have full faith that this Court will retain jurisdiction and see that such rights are fully recognized and protected.

On consideration of the foregoing authorities and the facts in this case, counsel for petitioners respectfully suggest that this is a case for determination by this Court, and that the record discloses a controlling Federal question; that the rights of these petitioners cannot be determined other than upon a determination of their rights under their Treaty and the Act of Congress of June 28, 1898, 30 Stat. at Large 495.

Petitioners therefore pray the Court to retain jurisdiction of this cause and decide the same upon the merits,

having confidence in their position that this cause is one of Federal cognizance; and these petitioners respectfully ask that the motion to dismiss, if the court permits the same to be submitted and considered, be denied.

Respectfully submitted

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